

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, and Joseph T. Kelliher.

Guardian Pipeline, L.L.C.

Docket No. RP04-332-000

ORDER ACCEPTING TARIFF SHEETS

(Issued July 15, 2004)

1. On June 15, 2004, Guardian Pipeline, L.L.C. (Guardian), filed tariff sheets<sup>1</sup> to provide a mechanism for the allocation of capacity that may become available on Guardian's system as a result of shippers agreeing to accept deliveries for a pre-determined period of time at pressures lower than those specified in their service agreements. As discussed below, the Commission will accept the proposed tariff sheets to become effective July 16, 2004. This action is in the public interest because it encourages the creation of additional capacity and provides a reasonable method of allocating such capacity.

**Background**

2. Guardian states that section 4.2 of the General Terms and Conditions (GT&C) of its tariff requires Guardian to provide deliveries to a shipper at the "prevailing line pressure," unless Guardian and the shipper otherwise agree.<sup>2</sup> Guardian states that reducing the required minimum delivery pressure at delivery points may increase the overall mainline throughput capacity of its system.

3. Therefore, Guardian proposes to modify its tariff to provide that any shipper with a delivery pressure guarantee under any firm transportation agreement, that is willing to waive its right to receive deliveries at that delivery pressure, would have the first right

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<sup>1</sup> Original Sheet Nos.142A and 142B to FERC Gas Tariff, Original Volume No. 1.

<sup>2</sup> Guardian states that its capacity is 750,000 dekatherms per day (Dth/day), based, in part, on stated design assumptions, including Guardian's agreement to maintain minimum delivery pressures at certain delivery points on its system under certain service agreements. Transmittal Letter at 1.

to subscribe to any capacity that may be created as a result of its voluntary waiver. Guardian states that if the shipper does not state its intent to subscribe to all or part of such newly available capacity within three business days of its agreement to a reduced delivery pressure, then Guardian will post any remaining unsubscribed capacity on Guardian's web site as firm capacity available during the period of the waiver and allocate such capacity according to Section 10 of the GT&C of its tariff.<sup>3</sup>

4. Guardian states that a shipper's agreement to waive its pressure minimum will not change the contracted level of capacity held by that shipper under the subject service agreement and that its proposal will only apply to waivers of the delivery pressure guarantee for periods less than the remaining term of the shipper's service agreement.<sup>4</sup>

5. Guardian requests that the Commission grant a limited waiver of the right of refusal for the newly available capacity formed under the instant proposal. Guardian states that the Commission has held that the right of first refusal (ROFR) should not apply in circumstances where its application would be impractical.<sup>5</sup> Here, Guardian states that granting complete ROFR rights to a shipper that has subscribed to the additional capacity resulting from an interim waiver of delivery pressure rights is impracticable, because such capacity will no longer be available for resubscription under the ROFR process once the term of the shipper's waiver expires and Guardian resumes deliveries at pressure levels set forth in the service agreement.

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<sup>3</sup> Guardian states that it does not propose to change the recourse rate for any firm service. Moreover, Guardian asserts that its proposal will not affect the rates of its existing shippers and will not result in any subsidy by existing shippers. Guardian asserts that the incremental capacity created under its proposal will be subject to new service agreements, and Guardian does not anticipate that the rates under any existing service agreements will change as a result of a shipper electing to waive its minimum pressure commitment. Transmittal Letter at 5.

<sup>4</sup> Guardian states that if a shipper wishes to waive its right to receive deliveries at certain minimum pressures for the entire remaining term of its contract, Guardian will address such a request through an amendment to the shipper's service agreement, and the tariff provisions proposed herein will not apply. Transmittal Letter at 3.

<sup>5</sup> Transmittal Letter at 3, citing, *Columbia Gulf Transmission Corp.*, 100 FERC ¶ 61,133, at P 14 (2002) (permitting transporter to limit the right of first refusal when making capacity available on an interim basis).

6. Therefore, Guardian proposes that the ROFR not apply to service agreements entered into for the sale of the newly available capacity, except that if capacity is subscribed for less than the full term of the waiver, a limited ROFR would be available to retain capacity only through the remaining period of the waiver. Guardian proposes that this limited ROFR would be available to a shipper executing a service agreement for additional capacity for a term less than the full term of waiver, provided the shipper was otherwise eligible for the ROFR in accordance with Guardian's tariff. However, Guardian proposes that the extension available under the ROFR may not exceed the duration of the waiver.

7. Guardian states that its proposal is not anticipated to have any significant impact on its revenues because periodically operating at reduced pressures is expected to result in only de minimis capacity increases that are not anticipated to exceed five percent of system capacity. Guardian estimates that the revenue generated from using this periodically available capacity will be less than \$500,000 per year. Guardian also requests that the Commission waive the requirement that it provide workpapers for its proposal (18 C.F.R. §154.204 (2004)) as the Commission will have a full opportunity to review the revenues associated with sales of this capacity as part of the cost and revenue study to be submitted by Guardian in approximately eighteen months.<sup>6</sup>

### **Public Notice, Interventions and Protests**

8. Public notice of Guardian's filing was issued with interventions and protests due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2004)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2004)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests were filed.

### **Discussion**

9. Guardian's proposal is acceptable because it allows customers with a pressure guarantee to enhance the pipeline's efficiency by increasing the capacity for either their own use or the use of others. Based upon Guardian's representation that existing shippers' rates will not change under their existing service agreements as a result of a shipper's election to waive pressure commitments, Guardian's proposal is not unduly preferential. Accordingly, the Commission finds Guardian's proposal to be just and reasonable and accepts the proposed tariff sheets to be effective July 16, 2004. However,

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<sup>6</sup> Transmittal Letter at 5, citing, Guardian Pipeline, L.L.C., 94 FERC ¶ 61,269 at 61,955 (2001).

Guardian's filing requires several waivers of the Commission's regulations and/or Guardian's tariff.

10. First, Guardian requests that the Commission permit it to waive its tariff ROFR provisions as set forth in the description of its filing. The Commission will permit Guardian to waive its tariff ROFR provisions in the manner described for the capacity created by a shipper's agreement to waive the pressure requirements of its service agreement. The Commission finds that Guardian has shown good cause to permit it to waive the ROFR provisions of its tariff to the extent such rights apply to the new physical capacity created by a shipper's agreement to receive service at a reduced pressure. However, if the new capacity is obtained for a term less than the period for which the shipper has agreed to reduce its pressure requirements, Guardian will provide a limited ROFR to permit a shipper to retain the capacity until the termination of the original shipper's agreement to receive service at a reduced pressure.

11. Second, Guardian requests that the Commission waive Rule 154.204 (e) to the extent that it requires that Guardian submit workpapers to support its proposal. This regulation requires in part that Guardian provide workpapers to reflect the estimated effect on revenues and costs over the 12-month period commencing on the effective date of the filing. Guardian estimates that its proposal would provide less than a \$500,000 annual effect on its revenues based upon a projected 20, 000 dth/day of capacity sold at rates at or near \$0.1533/dth and estimates that the costs will be de minimis. Guardian states that it will submit a cost and revenue study in approximately 18 months wherein the revenues and cost of its proposal may be fully examined by the Commission. Given that Guardian has provided preliminary cost and revenue estimates and it is required to submit a cost and revenue study within approximately 18 months as a requirement of its certificate authorization, the Commission finds good cause to waive its requirement that Guardian submit workpapers with the instant filing.<sup>7</sup>

12. Third, Guardian's June 15, 2004 filing provides only 29 days of notice instead of the requisite 30-day notice period for its requested effective date of July 15, 2004, and Guardian has failed to present any reason why the Commission should waive the 30-day notice period. Therefore, the Commission accepts Guardian's proposed tariff sheets to be effective July 16, 2004.

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<sup>7</sup> In its initial certificate proceeding, Guardian projected an in-service date for its system of November 1, 2002. 94 FERC at 61,935. In granting certificate authorization, the Commission required, among other things, that Guardian file to reflect its actual costs and revenues after three years of operation. 94 FERC at 61,995.

The Commission orders:

The tariff sheets listed in footnote No. 1 are accepted to be effective July 16, 2004, as discussed in the body of this order.

By the Commission. Commissioner Kelly not participating.

( S E A L )

Magalie R. Salas,  
Secretary.